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MENDEL BIOTECHNOLOGY C/O MOFO SF  
425 MARKET STREET  
SAN FRANCISCO, CA 94105

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JUN 25 2007

**OFFICE OF PETITIONS**

In re Application of  
Jacqueline E. Heard, et. al.  
Application No. 10/714,887  
Filed: November 13, 2003  
Attorney Docket No. MBI-0058CIP

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:  
:  
: DECISION ON PETITIONS  
: UNDER 37 CFR 1.78(a)(3) AND (a)(6)  
:

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 27, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application. All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

*The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.*

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence will be mailed solely to the address of record.

This application is being forwarded to Technology Center Art Unit 1638, for consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.



Frances Hicks  
Petitions Examiner  
Office of Petitions

**ATTACHMENT : Corrected Filing Receipt**

cc: Suzanne Mack  
Mendel Biotechnology, Inc.  
21375 Cabot Boulevard  
Hayward, CA 94545



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLMS	IND CLMS
10/714,887	11/13/2003	1638	1582	MBI-0058CIP	34	8

CONFIRMATION NO. 5720

47550

MENDEL BIOTECHNOLOGY C/O MOFO SF  
 425 MARKET STREET  
 SAN FRANCISCO, CA 94105

CORRECTED FILING RECEIPT



\*OC000000024501118\*

Date Mailed: 06/22/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

**Applicant(s)**

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 T. Lynne Reuber, San Mateo, CA;  
 Omaira Pineda, Vero Beach, FL;  
 Bradley K. Sherman, Berkeley, CA;

**Assignment For Published Patent Application**

Mendel Biotechnology, Inc., Hayward, CA

**Power of Attorney:** The patent practitioners associated with Customer Number 47550.

**Domestic Priority data as claimed by applicant**

This application is a CIP of 10/295,403 11/15/2002 ABN  
 which is a DIV of 09/394,519 09/13/1999 ABN  
 which claims benefit of 60/101,349 09/22/1998  
 and claims benefit of 60/103,312 10/06/1998  
 and claims benefit of 60/108,734 11/17/1998  
 and claims benefit of 60/113,409 12/22/1998  
 This application 10/714,887  
 is a CIP of 10/302,267 11/22/2002 PAT 7,223,904  
 which is a DIV of 09/506,720 02/17/2000 ABN

which claims benefit of 60/120,880 02/18/1999  
 and claims benefit of 60/121,037 02/22/1999  
 and claims benefit of 60/124,278 03/11/1999  
 and claims benefit of 60/129,450 04/15/1999  
 and claims benefit of 60/135,134 05/20/1999  
 and claims benefit of 60/144,153 07/15/1999  
 and claims benefit of 60/161,143 10/22/1999  
 and claims benefit of 60/162,656 11/01/1999  
 This application 10/714,887  
 is a CIP of 10/286,264 11/01/2002  
 which is a DIV of 09/533,030 03/22/2000 ABN  
 which claims benefit of 60/125,814 03/23/1999  
 This application 10/714,887  
 is a CIP of 10/278,173 10/21/2002 ABN  
 which is a DIV of 09/533,392 03/22/2000 ABN  
 which claims benefit of 60/125,814 03/23/1999  
 This application 10/714,887  
 is a CIP of 09/533,029 03/22/2000 PAT 6,664,446  
 which claims benefit of 60/125,814 03/23/1999  
 This application 10/714,887  
 is a CIP of 10/278,536 10/22/2002 ABN  
 which is a DIV of 09/532,591 03/22/2000 ABN  
 which claims benefit of 60/125,814 03/23/1999  
 This application 10/714,887  
 is a CIP of 09/713,994 11/16/2000 ABN  
 which claims benefit of 60/166,228 11/17/1999  
 and claims benefit of 60/197,899 04/17/2000  
 and claims benefit of 60/227,439 08/22/2000  
 This application 10/714,887  
 is a CIP of 10/675,852 09/30/2003  
 and is a CIP of 09/934,455 08/22/2001 ABN  
 which is a CIP of 09/713,994 11/16/2000 ABN  
 and is a CIP of 09/837,944 04/18/2001 ABN  
 and claims benefit of 60/227,439 08/22/2000  
 This application 10/714,887  
 is a CIP of 10/225,068 08/09/2002 PAT 7,193,129  
 which claims benefit of 60/310,847 08/09/2001  
 and claims benefit of 60/336,049 11/19/2001  
 and claims benefit of 60/338,692 12/11/2001  
 and is a CIP of 09/837,944 04/18/2001 ABN  
 and is a CIP of 10/171,468 06/14/2002 ABN  
 This application 10/714,887  
 is a CIP of 10/225,066 08/09/2002 PAT 7,238,860  
 which claims benefit of 60/310,847 08/09/2001  
 and claims benefit of 60/336,049 11/19/2001  
 and claims benefit of 60/338,692 12/11/2001  
 and is a CIP of 09/837,944 04/18/2001 ABN  
 and is a CIP of 10/171,468 06/14/2002 ABN  
 This application 10/714,887  
 is a CIP of 10/225,067 08/09/2002 PAT 7,135,616  
 which claims benefit of 60/310,847 08/09/2001  
 and said 10/225,067  
 claims benefit of 60/336,049 11/19/2001  
 and claims benefit of 60/338,692 12/11/2001  
 and is a CIP of 09/837,944 04/18/2001 ABN  
 and is a CIP of 10/171,468 06/14/2002 ABN  
 This application 10/714,887  
 is a CIP of 09/823,676 03/30/2001 PAT 6,717,034  
 and is a CIP of 10/669,824 09/23/2003  
 and is a CIP of 10/112,887 03/18/2002 ABN

and is a CIP of 10/412,699 04/10/2003  
 which is a CIP of 09/489,376 01/21/2000 ABN  
 which claims benefit of 60/116,841 01/22/1999  
 and said 10/412,699 04/10/2003  
 is a CIP of 09/819,142 03/27/2001 ABN  
 and is a CIP of 10/374,780 02/25/2003  
 This application 10/714,887  
 is a CIP of 10/374,780 02/25/2003  
 and is a CIP of 10/666,642 09/18/2003 PAT 7,196,245  
 which claims benefit of 60/411,837 09/18/2002  
 and claims benefit of 60/434,166 12/17/2002  
 and claims benefit of 60/465,809 04/24/2003

## Foreign Applications

If Required, Foreign Filing License Granted: 08/04/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US10/714,887**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

## Title

Plant transcriptional regulators of drought stress

## Preliminary Class

800

## PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).